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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/050,720	01/16/2002	Gerard Bonifacio	33900-95	7711
7590	03/31/2004			EXAMINER
Martin B. Pavane, Esq. Cohen, Pontani, Lieberman & Pavane Suite 1210 551 Fifth Avenue New York, NY 10176			HO, THOMAS Y	
			ART UNIT	PAPER NUMBER
			3677	
			DATE MAILED: 03/31/2004	

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/050,720	BONIFACIO, GERARD
	Examiner Thomas Y Ho	Art Unit 3677

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 22 December 2003.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 14,17,18,21-38,40-42 and 44-58 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) 14,17,18,21-38,40,41 and 44-53 is/are allowed.  
 6) Claim(s) 54-58 is/are rejected.  
 7) Claim(s) 42 is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 16 January 2002 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.	6) <input type="checkbox"/> Other: _____.

## **DETAILED ACTION**

### ***Status of Claims***

Claims 14, 17-18, 21-38, 40-42, and 44-58 are pending. Claims 1-13, 15-16, 19-20, 39, and 43 have been withdrawn or cancelled.

### ***Claim Objections***

Claim 42 is objected to because of the following informalities: claim 42 depends from cancelled claim 39; for purposes of examination, it will be assumed that claim 42 depends from claim 37. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

### **Claims 54-58 are rejected under 35 U.S.C. 102(b) as being anticipated by Ciambra**

**US4249393.**

As to claim 54, Ciambra discloses, an earring 30 comprising: a suspendable decorative part 11 defining a plane of suspension (the plane of suspension is defined by the surface of backing portion 18), and an attachment portion 32 depending from said decorative part and including: a first elongated substantially rectilinear portion 35 extending at a first angle (alpha) from the plane of suspension and being constructed, sized, and arranged to be passable through a hole in the ear, and a second elongated substantially rectilinear portion 36 extending from said first elongated portion at a second angle (beta) back toward the decorative part at a third angle

(gamma) with respect to the plane of suspension, and being constructed, sized, and arranged to abut against the ear (see Figure 4).

As to claim 55, Ciambra discloses, wherein said first angle is in the range of approximately 90 degrees to 150 degrees (the plane of surface 18 defines a 180 degree arc, and the incident angle between the first elongated substantially rectilinear portion and the plane can be interpreted as either the acute angle or the complementary obtuse angle; in this case, the obtuse angle is being used as the first angle).

As to claim 56, Ciambra discloses, wherein said first angle is approximately 135 degrees.

As to claim 57, Ciambra discloses, wherein said second angle is in the range of approximately 30 degrees to 100 degrees.

As to claim 58, Ciambra discloses, wherein said second angle is approximately 135 degrees.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 54-58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cheng US6237367 in view of Riley US0271121.**

As to claim 54, Cheng discloses, an earring (see Figure 1) comprising: a suspendable decorative part 11 defining a plane of suspension, and an attachment portion 15 depending from said decorative part. The difference between the claim and Cheng is the claim recites, a first

elongated substantially rectilinear portion extending at a first angle from the plane of suspension and being constructed, sized, and arranged to be passable through a hole in the ear, and a second elongated substantially rectilinear portion extending from said first elongated portion at a second angle back toward the decorative part at a third angle with respect to the plane of suspension, and being constructed, sized, and arranged to abut against the ear. Riley discloses an earring similar to that of Cheng. In addition, Riley further teaches a first elongated substantially rectilinear portion (see Figure 4; the left half of b') extending at a first angle from the plane of suspension and being constructed, sized, and arranged to be passable through a hole in the ear, and a second elongated substantially rectilinear portion (the right half of b') extending from said first elongated portion at a second angle back toward the decorative part at a third angle with respect to the plane of suspension, and being constructed, sized, and arranged to abut against the ear. It would have been obvious to one of ordinary skill in the art, having the disclosures of Cheng and Riley before him at the time the invention was made, to modify the attachment portion of Cheng to have the first and second portions and first and second angles of Riley, to obtain a bent attachment portion for a hoop earring. One would have been motivated to make such a combination because the ability to allow the pendant of the earring to lie flat or parallel with the cheek of the wearer would have been achieved, as taught by Riley (pg.2, ln.35-45).

As to claim 55, Riley teaches, wherein said first angle is in the range of approximately 90 degrees to 150 degrees.

As to claim 56, Riley teaches, wherein said first angle is approximately 135 degrees.

As to claim 57, Riley teaches, wherein said second angel is in the range of approximately 30 degrees to 100 degrees.

As to claim 58, Riley teaches, wherein said second angle is approximately 135 degrees.

***Allowable Subject Matter***

Claims 14, 17-18, 21-38, 40-41, and 44-53 are allowed.

Claim 42 would be allowable upon correction of the informality, as detailed above in the claim objections.

The following is a statement of reasons for the indication of allowable subject matter:

As to claim 14, the claim language recites that a third elongated rectilinear portion extends in a plane substantially parallel to the mean plane of the ring, wherein the first elongated rectilinear portion extends in a direction out of the mean plane of the ring. The closest prior art of Riley US0271121 discloses only first and second elongated portions, and no third elongated portion. Other cited references do not disclose or teach a first elongated rectilinear portion extending out of the mean plane.

As to claim 37, the claim language recites that a first elongated rectilinear portion extends at a first angle relative to a suspension plane, a second elongated rectilinear portion extends from the first elongated rectilinear portion to define a second angle between the two portions, and a third elongated rectilinear portion extends from the second elongated rectilinear portion to define a third angle between those two portions, and the third portion extending in a plane substantially parallel to the plane of suspension. Because this claim does not disclose that the first portion extends out of the suspension plane (as in claim 14), the closest prior art is Ciambra US4249393. However, Ciambra fails to disclose or suggest all of the claimed limitations. Figure 2 of Ciambra shows a third portion 26 parallel to the suspension plane defined by surface 18. The claim language necessitates that the second portion is 24, and the first portion is 22 (the claim

states that the third portion extends from the second portion, which in turn extends from the first portion). However, the first portion fails to make an angle with the suspension plane because they are parallel. Alternatively, one might indicate that the portion 20 is the first portion. Again, through the claimed relationships between the portions, the second portion must then be 22, and the third portion must then be 24, and this makes the third portion perpendicular to the suspension plane 18, rather than parallel as claimed.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas Y Ho whose telephone number is (703)305-4556. The examiner can normally be reached on M-F 10:00AM-6:00PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J Swann can be reached on (703)306-4115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

TYH

  
ROBERT J. SANDY  
PRIMARY EXAMINER